

Irving Oil Corporation
190 Commerce Way
Portsmouth, NH 03801

Re: Lisbon, NH
Site No. 200001062

**ADMINISTRATIVE ORDER
BY CONSENT**

No. WMD 02-21

A. INTRODUCTION

This Administrative Order by Consent is issued by the department of Environmental Services, Waste Management Division, to, and with the consent of, Irving Oil Corporation, pursuant to RSA 146-A. This Administrative Order by Consent is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Irving Oil Corporation ("Irving") is a Maine corporation, registered since September 21, 1998, to do business in New Hampshire, having a mailing address of 700 Maine Avenue, P.O. Box 401, Bangor, ME 04402.

C. STATEMENT OF FACTS AND LAW

1. RSA 146-A authorizes DES to regulate investigation, management, and remediation of petroleum discharges. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted Env-Ws 412 to "establish procedures and requirements for notification, reporting, response actions, and investigation for sites where discharges of oil have occurred."
2. RSA 146-A:15 authorizes the Commissioner of DES to impose fines of up to \$2,000 per offense for violations of RSA 146-A. Pursuant to RSA 146-A:15, the Commissioner has adopted Env-C 606 to establish a schedule of fines for such violations.
3. RSA 485-C authorizes DES to develop, implement, and monitor groundwater and wellhead protection programs, and to investigate, manage and remediate groundwater affected by regulated contaminants. Pursuant to RSA 485-C:4, the Commissioner of DES has adopted Env-Wm 1403 to "establish procedures and requirements for investigating, remediating, and managing contamination for sites where discharges of regulated contaminants have occurred, and to establish procedures for monitoring the groundwater for early detection of any impact associated with the activities listed in RSA 485-C."
4. RSA 485-C:18 authorizes the Commissioner to impose fines of up to \$2,000 per offense for violations of RSA 485-C. Pursuant to RSA 485-C:18, the Commissioner has adopted Env-C 609

to establish a schedule of fines for such violations.

5. Irving is the owner of real property located at 79 Main Street, Lisbon, NH, more particularly described on Tax Map U-05 as Lot 10 and recorded in Book 2244 on Page 73 of the Grafton County Registry of Deeds ("the Property").

6. Pursuant to Env-Wm 1403.02(q), Irving is subject to the strict liability provisions of RSA 146-A:3-a, RSA 147-A:9, and RSA 147-B:10.

7. Env-Wm 1403.06 requires Irving to report a violation of groundwater quality criteria of Env-Wm 1403.03 to DES within 60 days of discovery of the violation.

8. Irving retained Acadia Environmental ("Acadia") to prepare a Phase II Environmental Site Assessment (ESA-II) for due diligence investigation conducted prior to Irving's acquisition of the Property. Acadia submitted one copy of the ESA-II dated February 28, 1997 to the previous property owner, Caledonia, and another copy to the Irving Oil Corporation Real Estate Department. The report indicated that laboratory analysis of a water sample in one boring, B-4, detected methyl tertiary butyl ether (MTBE) at a concentration of 110 micrograms per liter ($\mu\text{g/l}$), which was in excess of the 1997 Ambient Groundwater Quality Criteria (AGQC) of 100 $\mu\text{g/l}$. Irving purchased the Property on March 28, 1997, subjecting Irving to the strict liability provisions of RSA 146-A:3-a, RSA 147-A:9, and RSA 147-B:10. Irving failed to report this violation of groundwater quality criteria of Env-Wm 1403.03 to DES within 60 days of discovery of the violation in accordance with Env-Wm 1403.06.

9. Env-Ws 412.08 (b) states that, "if groundwater contamination is present, an initial site characterization shall not be required and the responsible party shall conduct a site investigation in accordance with Env-Ws 412.10."

10. Env-Ws 412.10(d) requires responsible parties to submit a site investigation report in accordance with Env-Wm 1403.07(b) to the department within 120 days of notification by DES that the criteria of Env-Ws 412.10(a)(1-3) have not been met.

11. In February 2002, Irving contracted Acadia to review the Property's regulatory submissions in order to provide all pertinent information to a prospective purchaser of the Property. Acadia informed Irving that no response from DES regarding the February 28, 1997, ESA-II was on file. DES verified that the February 28, 1997, ESA-II had not been received. Irving subsequently filed the February 28, 1997, ESA-II with DES on February 28, 2002. Irving immediately contacted DES to proactively resolve issues regarding Irving's inadvertent failures to report groundwater contamination and conduct a site investigation according to Env-Wm 1403.06 and Env-Ws 412.08(b), respectively.

12. After discovery that a site investigation had been required pursuant to Env-Wm 1403.07(b), DES requested by letter dated June 12, 2002, that Irving conduct a site investigation of the Property and submit a site investigation report no later than 120 days from the date of the correspondence.

13. Irving submitted the site investigation on November 7, 2002. DES approved the site investigation report on December 20, 2002.

D. DETERMINATION OF VIOLATIONS

1. Irving has violated Env-Wm 1403.06 by failing to report to DES a violation of the groundwater quality criteria of Env-Wm 1403.03 within 60 days of discovery of the violation.
2. Irving has violated Env-Ws 412.08(b) by failing to complete a site investigation in accordance with Env-Ws 412.10 when groundwater contamination was present.
3. Irving, having violated Env-Wm 1403.06, has violated Env-Ws 412.08(d) by failing to submit a site investigation report in accordance with Env-Wm 1403.07(b) to DES within 120 days of notification by DES that the criteria of Env-Ws 412.10(a)(1-3) have not been met.

E. ORDER

Based on the above findings, DES hereby orders Irving Oil Corporation, and Irving Oil Corporation agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. Irving will reimburse \$15,000 to DES for costs related to the removal of the two (2) abandoned underground storage tanks at the Berlin Fire Department property located at 263 Main Street, Berlin, NH. Irving's payment shall cover costs incurred for tank removal, laboratory analysis of soil and groundwater samples, and preparation of a tank closure report necessary to comply with all of the requirements of Env-Wm 1401.18.
2. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Gary Lynn, P.E. Supervisor, Oil Remediation and Compliance Bureau
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax No.: (603) 271-2181
e-mail: glynn@des.state.nh.us

F. ADMINISTRATIVE FINES/STIPULATED PENALTIES

Administrative Fine:

For the violations noted in this Order, DES hereby assesses administrative fines against Irving in the amount of \$10,000. Irving shall submit a certified check for \$10,000 made payable to "Treasurer, State of New Hampshire" to DES Legal Unit, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095, no later than thirty (30) days after the effective date of this Administrative Order by Consent.

G. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Irving agrees that this Order shall apply to and be binding upon Irving, its officers, directors, successors, and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.

2. By execution of this Administrative Order by Consent, Irving waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this Order by a court of competent jurisdiction.

For administrative fines:

3. By execution of this Administrative Order by Consent, Irving waives any right to a hearing on or appeal of the administrative fines specified in section F provided by statute, rule, or common law, and waives any right to object to the fines in any collection action initiated by DES due to non-payment of the fines by Irving.

Irving Oil Corporation

COPY
By: [Signature]
DAVID BREEN
ASSISTANT TREASURER

Date July 7, 2003

NH Department of Environmental Services

COPY
Philip J. O'Brien, Ph.D., P.G., Director
Waste Management Division

Date 9/2/03

COPY
for [Signature] Asst + Comm.
Robert Monaco, Acting Commissioner
Michael P. Nolin

Date 9/2/03

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Berlin Public Health Officer
Berlin Fire Chief